

Minutes of Meeting

VIRGINIA REAL ESTATE BOARD INFORMAL FACT-FINDING CONFERENCES SEPTEMBER 17, 2003 (9:00 A.M.)

The Virginia Real Estate Board convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

S. Ronald Owens, Board Member, Presided and Marjorie Clark, Board Member, Assisted. No other Board members were present

Douglas W. Schroder appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc=Disciplinary Case
Lic=Licensing Application

C=Complainant/Claimant
A=Applicant
R=Respondent/Regulant
PB=Principal Broker
I=Investigator
W=Witness
Atty = Attorney

Participants

- | | | |
|----|---|---|
| 1. | Stephan L. Batton
File Number 2002-02246 (Disc)
No Decision Made | Batton – R
Clara Swanson – Atty. for Mr.
& Mrs. David Leavitt - C
Nathan Matthews - I |
| 2. | Stephan L. Batton
File Number 2003-03503 (RF) | Batton – R
Clara Swanson, Atty. for Mr.
& Mrs. David Leavitt - C |
| 3. | David L. Morton, Jr.
File Number 2002-02288 (Disc) | Morton– R
Kevette B. Elliott-R's Atty
Emerson Allen – W
Roy C. Burden – W
Janet Creamer - I |
| 4. | Lottie Suzette Robinson
File Number 2002-03047 (Disc) | Lottie S. Robinson – R
Janet Creamer - I |

5. William C. Wells
File Number 2002-02638 (Disc)
No Decision Made

Wells – R
Colin Connelly – W
Janet Creamer - I

6. Dorothy W. Lanier
File Number 2002-03460 (Disc)

Lanier – R
Colin Connelly – R's Atty
Rosalyn Richardson – W
A. Dale Perez – W
Dennette Bristow – W
David Schneider – W
Ted Swearingen – W
Janet Creamer - I

7. Lisa S. Kyriakides
File Number 2001-01303 (Disc)

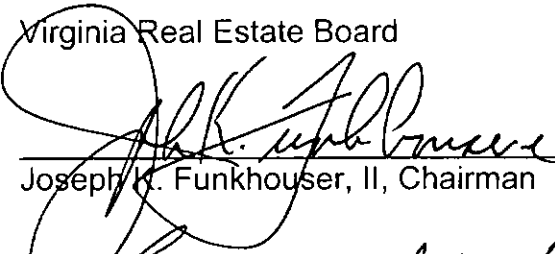
Lisa Kyriakides – R
Fred Hinton-R's Atty
Charles Forman – C (via telephone)

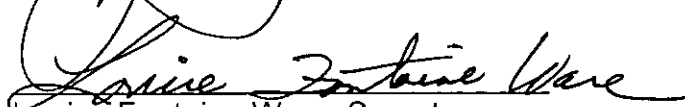
8. Lane A. Midgett
File Number 2004-00812 (Lic)

Lane A. Midgett – A
David Mehfoud – PB

The meeting adjourned at 7:15 p.m.

Virginia Real Estate Board


Joseph K. Funkhouser, II, Chairman


Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE BOARD

IN RE: IN THE MATTER OF THE VIRGINIA REAL ESTATE TRANSACTION
RECOVERY ACT CLAIM OF AILEEN AND DAVID LEAVITT
(CLAIMANTS) AND STEPHEN L. BATTON (REGULANT)
LICENSE NUMBER: 0225-055022

FILE NUMBER: 2003-03503

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Mr. & Mrs. David Leavitt, c/o Ms. Clara Swanson, Attorney and Mr. Stephan L. Batton, Martin Real Estate, Inc., t/a Century Realty on August 14, 2003. The following individuals participated at the conference: Clara Swanson, Attorney for Aileen and David Leavitt; Stephen L. Batton, Regulant; Douglas W. Schroder, Staff Member; S. Ronald Owens, Presiding Board Member; and Marjorie Clark, Assisting Board Member.

Background

On **June 10, 2002**, in the General District Court for the City of Hampton, Aileen and David Keen Leavitt, and Clara Swanson obtained a **Judgment Order** against Steve Batton, in the amount of **\$3,170.35, with interest plus \$30.00 costs**.

The **claim** in the amount of **\$3,200.35** was received by the Department of Professional and Occupational Regulation on **March 10, 2003**.

Summation of Facts

1. **Code of Virginia § 54.1-2114(A)** requires the underlying judgment to be based on improper or dishonest conduct.

The Warrant In Debt recites in part, "Insufficient Funds" as the basis of the suit. The block designated "Other" has been marked.

2. **Code of Virginia § 54.1-2114(A)** also requires the real estate transaction to involve the regulant acting in the capacity of a salesperson or broker and not in the capacity of a principal or on his own account.

Stephan L. Batton was issued a salesperson license number 0225055022 with an expiration date of **June 30, 2004**. The initial certification date was **June 14, 2000**.

3. **Code of Virginia § 54.1-2114(A)(1)** provides that whenever any action is instituted against a regulant of the Board, a copy of the process is to be served upon the Board.

The Real Estate Board was not served prior to the claim being filed.

4. **Code of Virginia § 54.1-2114(A)(2)** states a copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia § 54.1-2114(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The judgment order was entered on **June 10, 2002**. This claim was received on **March 10, 2003**.

6. **Code of Virginia § 54.1-2114(A)(4)** prohibits recovery when the claimant is a regulant, personal representative of the regulant, the spouse or child of the regulant, the personal representative of such spouse or child, a lending or financial institution, or anyone in the property development business.

On Questions 7, 8, 9 and 10 of the Claim Form, the claimant was asked: Are you the personal representative of a regulant (real estate salesperson/broker), spouse or child of the regulant, or the personal representative of such spouse or child? Do you hold, or have you ever held a Virginia Real Estate license? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? In response to the above questions, the claimant answered "No".

7. **Code of Virginia § 54.1-2114(A)(5)(6)(7)** requires the claimant to perform an investigation of the assets of the regulant which shall include the conducting of debtor's interrogatories and an investigation of any listings with commissions thereby due.

Debtor Interrogatories were conducted. No assets were revealed.

8. **Code of Virginia § 54.1-2114(A)(8)** requires that if the judgment debtor has filed bankruptcy, the claimant shall file with the proper bankruptcy court a complaint under 11 U.S.C. § 523 (a) and obtain an order determining dischargeability of debt.

On Question 5 of the Claim Form, the claimant was asked: To your knowledge, has the regulant (real estate salesperson/broker) filed for bankruptcy? In response to the above questions, the claimant answered "No".

On Question 6 of the Claim Form, the claimant was asked: Have you filed a complaint in the bankruptcy court to determine the dischargeability of this debt? In response to the above question, the claimant answered "N/A".

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$3,200.35, which includes Judgment for "insufficient funds" in the amount of \$3,170.35 plus \$30.00 Court Cost. The basis for the Judgment falls within the definition of improper and dishonest conduct per Section 54.1-2112, of the Code of Virginia.

The judgment is based on insufficient funds resulting from a check issued by Steve Batton dated November 21, 2001, in the amount of \$3,170.30, payable to Clara Swanson, Attorney for the Leavitt's. The check was returned by Steve Batton's credit union, stamped "DO NOT RE-DEPOSIT". Batton did not replace the check, and the tenant continued to occupy the premises without paying rent and property taxes.

It is noted that per Section 54.1-2119 that upon payment of the Recovery Fund Claim, the Board shall immediately revoke Batton's license.

By: _____

**S. Ronald Owens
Presiding IFF Board Member
Real Estate Recovery Fund**

Date: September 17, 2003

By: _____

**Marjorie Clark
Assisting IFF Board Member
Real Estate Recovery Fund**

Date: September 17, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
REAL ESTATE BOARD**

**RE: DAVID L. MORTON
LICENSE NUMBER: 0205 143417
FILE NUMBER: 2003-02288**

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to David L. Morton on August 14, 2003. The following individuals participated at the conference: David L. Morton, Respondent and Kevette B. Elliott, his Attorney; Emerson Allen and Roy C. Burden, Witnesses; Douglas W. Schroder, Staff Member; S. Ronald Owens, presiding Board Member and Marjorie Clark, assisting Board Member.

Summation of Facts

1. On or about November 14, 2000, Roy and Alice Burden (the Burdens) entered into an Exclusive Right to Sell Agreement with Twin Towers Realty, by David Morton (Morton), as Listing Agent. The Burdens initialed language in the agreement stating the Broker shall not offer sub agency or buyer agency.
2. On or about December 12, 2000, Andre Winkler (Winkler), as Purchaser, and the Burdens, as Sellers, entered into a Richmond Association of Realtors Purchase Agreement to purchase property known as 2816 Garland Avenue in Richmond, Virginia, through Twin Towers Realty, with Morton as listing agent.
3. The sales transaction closed on or about February 15, 2001.

4 Morton is Winkler's uncle. Winkler assumed Morton was working on his behalf in the sales transaction. Morton told Winkler he was working for the sellers; however, he would also help Winkler.

5. Morton suggested that Winkler look at newer homes as the property on Garland Avenue was already approximately 75 years of age and Winkler was a first time home buyer. Morton also urged Winkler to have the property re-inspected and/or conduct a walk-thru just prior to closing. Winkler did not sign a document stating Morton worked for the seller.

During the IFF, Morton testified that the disclosure of brokerage relationship form was given to Winkler to sign and he did not return it to Morton, as promised.

6. On April 30, 2002, Morton told Investigator Janet Creamer, the Board's Agent that he worked for the seller. Morton did not provide evidence that this disclosure of brokerage relationship was made in writing and signed by Winkler.

7. The contract, entered into by the Burdens and Winkler in December 2000, was subject to the purchaser obtaining a property inspection and report the cost of repairs to the seller.

8. An inspection was performed on January 4, 2001. Even though the inspection resulted in a list of identified defects, the report was not submitted to the seller in the form of a contract addendum, whereby the buyer and seller could negotiate the terms and conditions of the repairs to be made. Further, there was no written addendum signed between the parties which revealed the parties were in agreement with the repairs.

9. After closing, the property was re-inspected by the original house inspector. The re-inspection revealed the original repairs were either not performed or not performed properly.

Conclusion and Recommendation

Count 1: Section 54.1-2138(A) of the Code of Virginia

Morton having substantive discussions about a specific property with a prospective buyer (Winkler) who was not his client, and who was not represented by another licensee, was failure to disclose his brokerage relationship in writing, in violation of the Code of Virginia § 54.1-2138(A). According to Morton's testimony, he made a concerted effort to get Winkler to sign the agency disclosure form at the beginning of the transaction and that he informed Winkler that he was working for the seller, however he would also help Winkler. This led to a level of confusion on Winkler's part that would have been avoided with the proper execution of the agency disclosure form. It is noted that nothing was presented at the IFF conference to dispute Morton's testimony.

We do believe that a violation occurred but recommend that no monetary penalty be imposed for violation of this regulation.

Count 2: Section 54.1-2131(A)(4) of the Code of Virginia

As a licensee engaged by the seller, Morton's failure to assure that all circumstances of the home inspection were reduced to writing and signed by all parties to the transaction, is in violation of the Code of Virginia § 54.1-2131(A)(4). During the IFF, Morton testified that he told Winkler that he worked for the seller, but that he would help Winkler, as purchaser. Morton's failure to have the removal of contingency form regarding the home inspection signed by all parties in a timely manner, was not exercising ordinary care on behalf of the seller and could have been detrimental to Winkler, in meeting the terms set forth in the purchase agreement.

We therefore recommend that a monetary penalty of \$200.00 be imposed for a violation of this regulation.

By: _____

S Ronald Owens
Presiding IFF Board Member
Real Estate Board

Date: September 17, 2003

By: _____

Marjorie Clark
Assisting IFF Board Member
Real Estate Board

Date: September 17, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0205 143417 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
REAL ESTATE BOARD**

**RE: LOTTIE SUZETTE ROBINSON
 LICENSE NUMBER: 0225 060043**

FILE NUMBER: 2002-03047

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Lottie Suzette Robinson on August 14, 2003. The following individuals participated at the conference: Lottie Suzette Robinson, Respondent; Douglas W. Schroder, Staff Member; S. Ronald Owens, presiding Board Member and Marjorie Clark, assisting Board Member.

Summation of Facts

1. On or about December 18, 2001, First Union National Bank, as owner, entered into an Exclusive Authorization to Sell Agreement with Lottie Suzette Robinson (Robinson), of Century 21 Bennett and Edwards, for the sale of property located on Flat Street in Wise County (the County), Virginia.
2. When the listing was being negotiated, Robinson received information from U.S. Real Estate Services, Inc., the real estate company working for the seller at the time that the dwelling on the property had been officially condemned by the County in October 2001, and needed to be removed within 90 days.
3. On January 8, 2002, Robinson was faxed copies of the floodway map. Additionally, in a letter dated January 25, 2002, Robinson received information from the County that the property was located in a floodway, which required that certain procedures be met in order to replace the existing structure.
4. On or about January 8, 2002, First Union National Bank, as seller, and Glen and Patricia Grimes, as purchasers, entered into a Virginia Association of Realtors Residential Contract of Purchase for the property located on Flat Street in Wise County, Virginia, through Century 21 Bennett and Edwards, as both Listing and

Selling Broker, by Robinson, as listing agent representing the seller. The transaction settled on February 28, 2002.

5. Robinson failed to assure that the Grimes, as purchasers, received information prior to closing, that the property was located on a floodway or that the dwelling on the property was officially condemned by the County and had to be removed within a specified time.

6. During the IFF, Robinson testified that she read the letter, concerning the flood way information, to the Grimes over the telephone but did not provide the Grimes with a copy of that letter before closing. Grimes told Robinson that he was going to the courthouse to obtain a copy of the flood map and she felt that the Grimes had been appropriately informed about the property.

Conclusion and Recommendation

Count 1: Section 54.1-2131(B) of the Code of Virginia

We recommend that this count of the file be closed with a finding of no violation.

By: _____

**S Ronald Owens
Presiding IFF Board Member
Real Estate Board**

Date: September 17, 2003

By: _____

**Marjorie Clark
Assisting IFF Board Member
Real Estate Board**

Date: September 17, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
REAL ESTATE BOARD**

RE: DOROTHY W. LANIER
LICENSE NUMBER: 0225 001312

FILE NUMBER: 2002-03460

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Dorothy W. Lanier on August 14, 2003. The following individuals participated at the conference: Dorothy W. Lanier, Respondent and Colin Connelly, her Attorney; Rosalyn Richardson, A. Dale Perez, Dennette Bristow, David Schneider and Ted Swearingen, Witnesses; Douglas W. Schroder, Staff Member; S. Ronald Owens, presiding Board Member and Marjorie Clark, assisting Board Member.

Summation of Facts

1. On or about December 29, 2001, Ernest and Stephany Sessions (the Sessions) entered into a listing agreement with Dorothy Lanier (Lanier), of Swearingen Realty, to list their property known as 4305 Lakeview Road in Petersburg, Virginia, at \$98,500.00.
2. At the time of the listing agreement and thereafter, the Virginia Department of Transportation (VDOT) was in the process of acquiring approximately 3' to 5' of frontal property from the Sessions' land. VDOT was also in the process of completing an appraisal and subsequent purchase offer of the frontal property from the Sessions.
3. On March 21, 2002, Rosalyn Richardson (Richardson), Right of Way Agent, with VDOT, told Lanier about the appraisal and terms of the purchase offer to be presented by VDOT for the Sessions' property.
4. On September 10, 2002, Lanier told the Boards Agent, Investigator Janet P. Creamer, that she did receive information, which included the appraised value and VDOT offer amount for the Sessions' frontal property, when she talked with Richardson on March 21, 2002.

During the IFF, Richardson testified that she discussed the Sessions' VDOT appraisal and amount of frontal property in the VDOT proposal with Lanier while she was at the Bristow's home because Lanier told Richardson that she was handling the sale of the Session's property. Richardson also testified that she and Lanier did not discuss the amount of money that would be offered for the purchase of the frontal property. Richardson testified that she would not have given the VDOT offer "package" information to Lanier because it was Richardson's responsibility to mail this offer directly to the Sessions.

5. Lanier failed to give this information to the Sessions.

During the IFF, Lanier testified that she did not withhold information from the Sessions, pertaining to the VDOT property acquisition. At the time Lanier was told that "a package was being sent to the Sessions" from VDOT by Richardson, she notified the Sessions that this information was being sent to them.

Conclusion and Recommendation

Count 1: Section 54.1-2131(A)(2)(c) of the Code of Virginia.

Lanier's failure to disclose to the Sessions the terms of the VDOT offer to purchase and the amount of the VDOT appraisal is a violation of § 54.1-2131(A)(2)(c) of the Code of Virginia.

We felt that Richardson's account of the information disclosed to Lanier on March 21, 2002, regarding the Session's property was credible. We felt Lanier had more information available to her than what she disclosed to the Sessions. Due to the conflicting testimony presented at the IFF, we do not feel a monetary penalty should be imposed, even though we feel a violation did occur.

By: _____

**S. Ronald Owens
Presiding IFF Board Member
Real Estate Board**

Date: September 17, 2003

By: _____

**Marjorie Clark
Assisting IFF Board Member
Real Estate Board**

Date: September 17, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0225 001312 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
REAL ESTATE BOARD**

RE: **LISA KYRIAKIDES**
 LICENSE NUMBER: 0205 122414

FILE NUMBER: 2001-01303

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Lisa S. Kyriakides on August 14, 2003. The following individuals participated at the conference: Lisa S. Kyriakides, Respondent, and Fred Hinton, her Attorney; Charles Forman, Complainant; Lyle Lathrop, Witness; Douglas W. Schroder, Staff Member; S. Ronald Owens, presiding Board Member and Marjorie Clark, assisting Board Member.

Summation of Facts

1. On or about March 9, 2000, Charles & Tracey Forman (Formans) entered into a Purchase Agreement with The Terry Companies Three, L.L.C. for 4605 Hunting Wood Road, Chesapeake, Virginia 23320, through Lisa S. Kyriakides (Kyriakides), seller's agent, t/a The Leading Edge Ltd., and Lyle Lathrop (Lathrop), buyer's agent, t/a Helfant Realty.

2. On or about March 9, 2000, prior to the Formans making an offer on the property, Kyriakides told the Formans, in the presence of Lathrop, that the backyard of the property they were interested in would have a depth of approximately 25 feet.

During the IFF, Kyriakides testified that she did not tell the Forman's that their yard would be a specific size. Forman had the option to put a contingency in the contract that would stipulate a certain size yard for the townhouse and neither he nor his buyer agent did so.

3. On or about September 18, 2000, the Formans inspected the house that they were under contract to purchase. The Formans measured the backyard and found that it had a depth of approximately 10 to 12 feet. The Formans notified the seller of this matter and requested that they be relocated to another lot, with the yard size they were promised or that they be released from the contract with a full refund of monies paid.

4. Robert E. Ruloff, the seller's attorney, notified the Formans that they would not be released from the contract by the seller.

5. On or about September 29, 2000, the Formans attended settlement on the property.

Conclusion and Recommendation

Count 1: Section 54.1-2131(B)(ii) of the Code of Virginia

We recommend that this count of the file be closed with a finding of no violation. We believe that Forman had the option to make the size of the yard a condition of his purchase offer through his buyer agent. While Kyriakides had indicated that most yards would be similar to the existing condominiums built in "phase 1", neither she nor the Formans had actually seen the size of the yards in "phase 2" which was not yet built.

In the general disclosure addendum to the contract, dated March 9, 2000, under item number V, the Formans were advised of their right to obtain a survey of the property to determine the actual boundaries, which the Formans nor their buyer agent chose to do..

By: _____

**S Ronald Owens
Presiding IFF Board Member
Real Estate Board**

Date: September 17, 2003

By: _____
Marjorie Clark
Assisting IFF Board Member
Real Estate Board

Date: September 17, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
REAL ESTATE BOARD**

**IN RE: LANE A. MIDGETT
APPLICATION**

FILE NUMBER: 2004-00812

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Lane A. Midgett on August 19, 2003. The following individuals participated at the conference: Lane A. Midgett, Applicant; David Mehfood, his prospective broker; Douglas W. Schroder, Staff Member; R. Ronald Owens, Presiding Board Member and Marjorie Clark, Assisting Board Member.

Summation of Facts

1. Lane A. Midgett (Midgett) applied for a real estate salesperson license on or about July 31, 2003, and disclosed a criminal conviction.
2. On or about August 13, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding Conference Referral Memorandum, which states the reasons the license was not issued.
3. During the IFF, Midgett stated that he deeply regrets his actions, which resulted in his convictions and hopes to be successful as a real estate salesperson. Midgett has taken and passed the real estate salesperson's examination. Also, during the IFF, David Mehfood identified himself as Midgett's prospective employing broker and agreed

to provide training along with close supervision. Mehfoud stated that he has known Midgett for ten years and is aware of the criminal convictions.

Prior Criminal Convictions

§ 54.1-204 of the Code of Virginia. Prior convictions not to abridge rights.

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;

Midgett was convicted on June 1, 2000, of two counts of Felonious Assault in the Circuit Court for the City of Richmond, Virginia.

2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;

The purpose of licensure is to protect the health, safety, and welfare of the public. We believe that this conviction would not affect Midgett's performance in the real estate business. We do not feel that Midgett would be a danger to the public.

3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;

It does not appear that granting Midgett a license would encourage any further criminal activity.

4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

We do not see any significant relationship of the crime to Midgett's fitness to engage in licensed activity.

5. The extent and nature of the person's past criminal activity;

Midgett was convicted of two counts of Felonious Assault.

6. The age of the person at the time of the commission of the crime;

Midgett was approximately 19 years old at the time of the crime.

7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;

The last offense occurred on or about November 7, 1999.

8. The conduct and work activity of the person prior to and following the criminal activity; and

During the IFF, Midgett stated he was a fulltime student years prior to his conviction and he has worked in several part time jobs while continuing his education. Midgett provided a copy of his transcripts from VCU, which shows he was an honor student along with several certificates of academic achievement.

9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

Following a short period of incarceration, Midgett was placed on work release for nine months. Midgett was required to complete the ASAP program for his DUI conviction and is currently under supervised probation. Midgett was also required to attend substance abuse counseling.

Conclusion and Recommendation

Based upon the record, including the information obtained from the Central Criminal Records Exchange, and in consideration of the criteria outlined in § 54.1-204.B, we recommend Midgett's application be approved.

By: _____

S. Ronald Owens
Presiding IFF Board Member
Real Estate Board

Date: September 17, 2003

By: _____

Marjorie Clark
Assisting IFF Board Member
Real Estate Board

Date: September 17, 2003